IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16..07..2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeal No.511 of 2002

A. Elangobalan ... Appellant/Petitioner

Vs.

1. The Assistant General Manager
State Bank of India, Region I
Zonal Office, Madurai-2.

2. The Deputy General Manager
State Bank of India, Zonal Office
Madurai-2. ..Respondents/Respondents

The Writ Appeal is preferred under Clause 15 of the Letters Patent as against the Order of the learned single Judge dated 22.3.2001 made in W.P.No.2156 of 1994 presented under Article 226 of the Constitution of India to issue a Writ of direction calling for the records of the Ist Respondent relating to his order No. Dis. Con.116 dated 2/9/92 as ; confirmed in appeal by the Ist Respondent Vide his order Dis No. 26 dated 12/2/93 and quash the same.

For Appellant : Mr.K.Veluswami

For Respondents : Mr.S.Jayaraman

JUDGMENT

(Judgment of the Court was delivered by

ELIPE DHARMARAO ,J.)

This writ appeal is directed against the order dated 22.3.2001 passed by the learned single Judge in W.P.No. 2156 of 1994, which was filed against the dismissal of the writ petitioner from service.

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2. The writ petitioner, who joined as part time Sweeper – cum – Waterboy on 17.6.1987 at Therkutheru Branch, was placed under suspension by proceedings dated 15.12.1987 for an alleged theft of Rs.40,000/- from the respondent Bank, viz., State Bank of India, on 11.12.1987 and thereafter, enquiry was ordered in which he was found guilty of the charges framed against him. Based on the enquiry report, he was dismissed from service by proceedings dated 02.9.1992 and the same was confirmed by the second respondent appellate authority by proceedings dated 12.02.1993. As against the order of dismissal from service, the writ petition was filed.

3. The learned Judge, after going through the materials placed on record and after hearing the arguments advanced by the learned counsel for the parties, held that there is no necessity to register a complaint with the Police in all the matters of irregularities even if the charges constitute a criminal offence and that merely because the respondent Bank have not registered a criminal complaint, it will not take away the jurisdiction of the Management of the respondent Bank to initiate a disciplinary action against the petitioner and accordingly, the dismissed the petition. Aggrieved at the same, the present appeal is filed.

4. We have heard Mr.K.Vijay Shankar, learned counsel appearing for the appellant and Mr.S.Jayaraman, learned counsel appearing for the respondent Bank and have perused the records.

5. Learned counsel appearing for the appellant, reiterating the same contentions made before the learned Judge, submitted that the impugned order of dismissal is a non-speaking order. He submitted that though the appellant sought for relevant documents, they documents were not supplied to him, which amounts to violation of the principles of natural justice. He further submitted that the respondent Bank has not preferred any complaint with regard to the alleged theft nor taken any action against the persons who were in charge of the transaction relating to the alleged stolen amount and, therefore, the impugned enquiry, disciplinary action and the consequential order of dismissal are vitiated. As such, according to the learned counsel for the appellant, the impugned order of dismissal is liable to be quashed.

6. Learned counsel appearing for the respondent Bank submitted that non-furnishing of the documents requested by the appellant will not amount to violation of principles of natural justice as they are not relevant to the impugned order.

7. In paragraph 4 of the counter affidavit filed by the respondent Bank, it is stated that on 11th December 1987, when the appellant was working as part-time sweeper-cum-water boy at Therku Theru Branch as a

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cash remittance of Rs.1 lakh was received at the said Branch at about 11.00 AM from Melur branch of the Bank; that around 1.30 PM on the same day, out of the above remittance, one V.Stephen, Cash Officer kept Rs.40,000/- comprising four sections of Rs.100/- denomination notes in his Table drawer (unlocked) after verification and that the petitioner stole that money of Rs.40,000/- and secretly kept the same in his place of stay at Therku Theru (3/109 Main Road, Therku Theru, Madurai) where the said money, which was stolen by the petitioner at the branch, was found upon a search made around 10.10 PM on the same day thereby committing the above misconduct. Further, it is clear that the said amount was recovered on 12.12.1987, viz., on the very next day of the alleged occurrence of theft and five days before his confirmation of appointment, ie., on 17.12.1987. Though

he denied the allegations in the charge sheet, which was issued on 27.7.1988, an enquiry officer was appointed on 26.10.1988. Thereafter, by letter dated 21.12.1988, he requested the Enquiry Officer to supply some documents in order to submit his defence for which except two documents, other documents were not furnished. Enquiry was proceeded with and four witnesses were examined. Though personal hearing was given on 13.8.1991, the impugned order of dismissal was passed only 02.9.1992 ie., after a lapse of five years from the date of the alleged occurrence.

8. The fact remains that non-furnishing of vital documents, viz., complaints, basic documents as well as the documents recorded during the preliminary enquiry, to the delinquent, would amount to deprivation of a reasonable opportunity required to be given to him in accordance with the principles of natural justice. It is rather clear that once a theft has occurred in the Bank, which is run with the public money,

the primary duty of Bank is to remit the cash and to lodge a complaint to the Police and only thereafter, if they have any doubt, they can search his house. But, on the contrary, in this case, the officers themselves by taking the law into their hands, after a lapse of so many hours, made search in the house of the appellant in the midnight without any authority and recovered the amount and after seizure of the said amount, they have given the police complaint.

9. Further, after going through the materials placed on record, we find that nobody witnessed the alleged theft of the money by the appellant from the table drawer of the Cashier Stephen. Therefore, in the absence of registration of any criminal case and any mahazar witness at the time of seizure, the respondent Bank officials are not correct in making a search by taking the law in their hands, in the house of the appellant.

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10. When this Court put a question to the learned counsel appearing for the respondent Bank as to whether there is any power vested on the Bank Management to go to his house, search and seize the money, learned counsel fairly stated that there is no such power vested on the Management under any provisions of law. Therefore, the search and seizure made by the Bank officials itself is wrong.

11. We are unable to appreciate the reasons given by the learned Judge in dismissing the writ petition that there is no necessity in all the matters of irregularities to register a criminal case and that non-supply of documents to the appellant does not amount to violation of principles of natural justice. On the other hand, we are of the view that non-supply of documents and non-registration of criminal case and taking law in hands by the Bank Management, have caused great prejudice to the appellant and the alleged theft by the appellant was invented at the time of confirmation of his appointment.

12. In the light of the above, both the impugned order of dismissal and the order of the learned Judge are liable to be set aside. Accordingly, the writ appeal is allowed setting aside the impugned order of dismissal and the order of the learned Judge. However, there will be no order as to cost.

Gri

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Assistant General Manager
   State Bank of India, Region I
   Zonal Office, Madurai-2.

2. The Deputy General Manager
   State Bank of India, Zonal Office
   Madurai-2.

+ One c to Mr. M. Veluswami, Advocate sR 43377
+ One cc to Mr. S. Jayaraman, Advocate sR 43003

TEJ (co)
sg 3/8/07

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